IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.28866 of 2002

1. NAND KISHORE PANDIT
2. Mauleshwari Devi
3. Tinku Pandit …… Petitioners

Versus

STATE OF BIHAR & ANR

For the Petitioners: M/s R.C.Thakur & Kamal Kishore Singh
For Opposite party : M/s Satish Chandra Mishra & Nurul Hoda, Advocates

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13. 17.12.2008 Heard the learned Counsel for the petitioner and the learned counsel for the opposite party no. 2.

The prayer in this application under Section 482 Cr.P.C. is for quashing the order of cognizance dated 11.1.2002 as also the entire proceedings in Barari PS Case No. 35 of 2000 under Sections 323, 341, 379, 419, 420, 468 and 120B of the Penal Code arising out of Complaint Case No. 717 of 2000 filed on 6.5.2000 sent for investigation under Section 156 (3) Cr.P.C.

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The complaint urges that the complainant was the owner of certain lands in pursuance of purchase by a registered sale deed dated 22.2.1975 created in his name and Jamabandi running in his name. That his lands were fraudulently mortgaged on 8.10.1998 with the Punjab National Bank by the petitioners for the purpose of taking loan for purchase of a tractor by representing that Jamabandi for the lands was in their name, in collusion with the Halka Karamchari, the Circle Officer and the Branch Manager of the Bank. The complainant objected to the same. The petitioners threatened him with dire consequences. In this manner by preparation of forged and fraudulent mortgage deed with regard to his lands the petitioners have done great injustice to him and assaulted him with fists and slaps and snatched “some valuable documents”.

Learned Counsel for the petitioners submits that earlier Complaint Case No. 707 of 2000 was filed on 4.5.2000 for the same allegations when the Halka Karmchari, the Circle Officer and the Branch Manager of the Punjab National Bank were also impleaded as accused. This complaint was then withdrawn on 6.5.2000 on the submission that by mistake some wrong persons had been impleaded as accused. The present complaint was then filed on the same date. Despite the allegations that the petitioners had acted in collusion and conspiracy with the Halka Karmchari, Circle Officer and Branch Manager, nonetheless they were deleted from the array of accused.

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It is not in controversy between the parties that the complainant was a purchaser of certain lands from none other than the so-sharers/co-owners of the petitioners. It was therefore essentially family lands of the petitioners. There was a dispute for partition between the co-owners and the petitioners and for which Title Suit No. 34 of 1978 had been filed by the petitioners. The present complainant was defendant no. 13 in the suit. The lands which are the subject matter of the complaint form part of Schedule 'B' of the plaint of the Title Suit. The suit was decreed on 1.9.1979. All these facts have been concealed in the present complaint by attempting to portray that the lands belonged to a third person from whom the complainant had purchased and that the petitioners were interlopers and unlawful intruders.

In the given nature of the controversy it is apparent that the complainant was basically aggrieved with the threat to his lands by reason of what he perceived as a fraudulent mortgage created by the petitioners for purposes of taking loan for purchase of a tractor. Any default by the petitioners in repayment of the loan would naturally have its fall out on the land of the complainant. Quite justifiably he then took recourse to the criminal law. This Court on the previous occasion had desired to know from the parties if the loan taken by the petitioners with regard to purchase of the tractor in question has been repaid in its entirety to the Bank. If that be so the perceived threat of the complainant with regard to his lands would no more exist. The allegations of any fraudulent act with regard to government entries and in pursuance of which the mortgage may have been done does not survive for adjudication any more when the complainant himself chose to delete the Halka Karmchari, the Circle Officer and the Branch Manager as the accused.

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Jamabandi entries are only for fiscal purposes regarding payment of revenue. The Supreme Court in 2008 (9) SCC 368 (Rajinder Singh Versus State of Jammu and Kashmir & others) at paragraph 17 has held as follows:-

> "17. It is well settled that revenue records confer no title on the party. It has been recently held by this Court in Suraj Bhan v. Financial Commissioner (2007) 6 SCC 186, that such entries are relevant only for "fiscal purpose" and substantive rights of title and of ownership of contesting claimants can be decided only by a competent civil court in appropriate proceedings."

Learned Counsels for the parties after obtaining instructions from their respective clients have fairly conceded in open court proceedings that the petitioners have in fact repaid he entire loan taken for purchase of tractor and in respect of which the mortgage in question was executed. If that be correct, the loan be repaid, the mortgage no more survives; the lands of the complainant are now safe.

In the peculiar facts and circumstances of the case this Court is satisfied that no useful purpose shall be served by continuance of the present prosecution when the interest of the informant for which the proceedings had been instituted stand fully protected and confirmed now.

Entire proceedings in Barari PS Case No. 35 of 2000 including the order of cognizance dated 11.1.2005 is quashed.

The application stands allowed.

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Snkumar/-

(Navin Sinha,J.)